

SENATE BILL No. 431

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-13; IC 13-18; IC 15-3-3-12.

Synopsis: Confined feeding operations. Increases fees with respect to a confined feeding operation (CFO). Requires notice to persons located within one mile of the proposed manure storage facility at a proposed CFO. Establishes good character requirements for a CFO. Requires the state chemist to adopt rules relating to the use of fertilizer material and the distribution and storage of bulk commercial fertilizers. Makes conforming amendments.

Effective: July 1, 2007; January 1, 2008.

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January 18, 2007, read first time and referred to Committee on Energy and Environmental Affairs.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 431

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-11-2-71, AS AMENDED BY P.L.170-2006,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 71. "Environmental management laws" refers to
4 the following:
5 (1) IC 13-12-2 and IC 13-12-3.
6 (2) IC 13-13.
7 (3) IC 13-14.
8 (4) IC 13-15.
9 (5) IC 13-16.
10 (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
11 (7) **IC 13-18-10, IC 13-18-10.5**, IC 13-18-12, and IC 13-18-15
12 through IC 13-18-20.
13 (8) IC 13-19-1 and IC 13-19-4.
14 (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15,
15 IC 13-20-17.7, and IC 13-20-19 through IC 13-20-21.
16 (10) IC 13-22.
17 (11) IC 13-23.



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- 1 (12) IC 13-24.
- 2 (13) IC 13-25-1 through IC 13-25-5.
- 3 (14) IC 13-27-8.
- 4 (15) IC 13-30, except IC 13-30-1.

5 SECTION 2. IC 13-11-2-191 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 191. (a) "Responsible
7 party", for purposes of **IC 13-18-10.5** and IC 13-19-4, means:

- 8 (1) an officer, a corporation director, or a senior management
9 official of a corporation, partnership, limited liability company, or
10 business association that is an applicant; or
- 11 (2) an individual, a corporation, a limited liability company, a
12 partnership, or a business association that owns, directly or
13 indirectly, at least a twenty percent (20%) interest in the
14 applicant.

15 (b) "Responsible party", for purposes of IC 13-20-6, means:

- 16 (1) an officer, a corporation director, or a senior management
17 official of a corporation, partnership, limited liability company, or
18 business association that is an operator; or
- 19 (2) an individual, a corporation, a limited liability company, a
20 partnership, or a business association that owns, directly or
21 indirectly, at least a twenty percent (20%) interest in the operator.

22 (c) "Responsible party", for purposes of IC 13-24-2, has the meaning
23 set forth in Section 1001 of the federal Oil Pollution Act of 1990 (33
24 U.S.C. 2701).

25 (d) "Responsible party", for purposes of IC 13-25-6, means a person:

- 26 (1) who:
 - 27 (A) owns hazardous material that is involved in a hazardous
28 materials emergency; or
 - 29 (B) owns a container or owns or operates a vehicle that
30 contains hazardous material that is involved in a hazardous
31 materials emergency; and
- 32 (2) who:
 - 33 (A) causes; or
 - 34 (B) substantially contributes to the cause of;
35 the hazardous materials emergency.

36 SECTION 3. IC 13-13-3-2 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. The department must
38 include the following divisions:

- 39 (1) An air pollution control division.
- 40 (2) A water pollution control division.
- 41 (3) A solid waste management division.
- 42 ~~(4) A laboratory division.~~

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~~(5)~~ (4) An administrative services division.

~~(6)~~ (5) A division of pollution prevention.

SECTION 4. IC 13-13-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. The:

(1) position of commissioner;

(2) highest position in each of the offices, except for the offices identified in:

(A) IC 13-13-3-1(1); and

(B) IC 13-13-3-1(3); and

(3) highest position in each of the divisions; ~~except for the division identified in IC 13-13-3-2(4);~~
are subject to IC 4-15-1.8.

SECTION 5. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 1. (a) A person may not start construction of a confined feeding operation without obtaining the prior approval of the department. **IC 13-18-10.5 applies to an approval under this subsection.**

(b) **Subject to IC 13-18-10.5**, obtaining an NPDES permit for a CAFO meets the requirements of subsection (a) and 327 IAC 16 to obtain an approval.

SECTION 6. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Application for approval of the construction of a confined feeding operation must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.

(2) A manure management plan that outlines procedures for the following:

(A) Soil testing.

(B) Manure testing.

(3) Maps of manure application areas.

(4) Supplemental information that the department requires, including the following:

(A) General features of topography.

(B) Soil types.

(C) Drainage course.

(D) Identification of nearest streams, ditches, and lakes.

(E) Location of field tiles.

(F) Location of land application areas.

(G) Location of manure treatment facilities.

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1 (H) Farmstead plan, including the location of water wells on
2 the site.

3 (5) A fee of ~~one hundred three thousand~~ dollars ~~(\$100)~~.
4 **(\$3,000)**. The department shall refund the fee if the department
5 does not make a determination in accordance with the time period
6 established under section 2.1 of this chapter.

7 (b) An applicant who applies for approval to construct a confined
8 feeding operation on land that is undeveloped or for which a valid
9 existing approval has not been issued shall make a reasonable effort to
10 provide notice:

11 (1) to:

12 (A) each person who owns land that ~~adjoins the land on which~~
13 **is partially or wholly located within one (1) mile of the**
14 **proposed manure storage facility at** the confined feeding
15 operation; ~~is to be located;~~ or

16 (B) if a person who owns land that ~~adjoins the land on which~~
17 **is partially or wholly located within one (1) mile of the**
18 **proposed manure storage facility at** the confined feeding
19 operation ~~is to be located~~ does not occupy the land, all
20 occupants of the land; and

21 (2) to the county executive of the county in which the confined
22 feeding operation is to be located;

23 not more than ten (10) working days after submitting an application.
24 The notice must be sent by mail, be in writing, include the date on
25 which the application was submitted to the department, and include a
26 brief description of the subject of the application. The applicant shall
27 pay the cost of complying with this subsection. The applicant shall
28 submit an affidavit to the department that certifies that the applicant
29 has complied with this subsection.

30 (c) Plans and specifications for manure treatment or control
31 facilities for a confined feeding operation must secure the approval of
32 the department. The department shall approve the construction and
33 operation of the manure management system of the confined feeding
34 operation if the commissioner determines that the applicant meets the
35 requirements of:

36 (1) this chapter;

37 (2) rules adopted under this chapter;

38 (3) the water pollution control laws;

39 (4) rules adopted under the water pollution control laws; and

40 (5) policies and statements adopted under IC 13-14-1-11.5
41 relative to confined feeding operations.

42 SECTION 7. IC 13-18-10-2.3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.3. A confined feeding operation must submit **the following to the department every five (5) years to maintain a valid approval for the confined feeding operation under this chapter:**

(1) A manure management plan that outlines:

(A) procedures for soil testing;

(B) manure testing; and

(C) maps of manure application areas. ~~to the department at least one (1) time every five (5) years to maintain valid approval for the confined feeding operation under this chapter.~~

(2) **A renewal fee of two hundred fifty dollars (\$250).**

SECTION 8. IC 13-18-10-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.4. (a) **The following fees apply in addition to the other fees in this chapter:**

(1) **A person with a valid confined feeding operation approval shall pay an annual operating fee of four hundred dollars (\$400) for each valid confined feeding operation approval.**

(2) **A person with a valid NPDES permit issued under 327 IAC 5 or 327 IAC 15 for a CAFO shall pay an annual operating fee of one thousand eight hundred fifty dollars (\$1,850) for each valid NPDES permit for a CAFO.**

(b) **The fees in this section shall be paid annually by July 1.**

SECTION 9. IC 13-18-10.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 10.5. Good Character Requirements for Confined Feeding Operations

Sec. 1. This chapter applies only to the following with respect to confined feeding operations, including concentrated animal feeding operations, submitted after December 31, 2007:

(1) **An application to the department under IC 13-18-10-2 for approval of the start of construction of the following:**

(A) **A confined feeding operation.**

(B) **A major modification of a confined feeding operation.**

(2) **An application to the department under 327 IAC 5-4-3 for approval of an NPDES permit for the following:**

(A) **A confined feeding operation.**

(B) **A major modification of a confined feeding operation.**

(3) **A notice of intent under 327 IAC 15-15-5 for the following:**

(A) **A confined feeding operation.**

(B) **A major modification of a confined feeding operation.**

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1 **Sec. 2. (a) A person and each responsible party with respect to**
 2 **that person must meet the requirements of this section before any**
 3 **of the following:**

4 **(1) Approval under IC 13-18-10-1 by the department of an**
 5 **application for approval of the start of construction of the**
 6 **following:**

7 **(A) A confined feeding operation.**

8 **(B) A major modification of a confined feeding operation.**

9 **(2) Approval by the department of an application for**
 10 **approval under 327 IAC 5-4-3 of an NPDES permit for the**
 11 **following:**

12 **(A) A confined feeding operation.**

13 **(B) A major modification of a confined feeding operation.**

14 **(3) Except as provided in subsection (c), submission by the**
 15 **person of a notice of intent under 327 IAC 15-15-5 for the**
 16 **following:**

17 **(A) A confined feeding operation.**

18 **(B) A major modification of a confined feeding operation.**

19 **(b) A person and a responsible party referred to in subsection**
 20 **(a) must submit to the department:**

21 **(1) a disclosure statement that:**

22 **(A) meets the requirements set forth in section 3(a) of this**
 23 **chapter; and**

24 **(B) is executed under section 3(b) of this chapter; or**

25 **(2) all of the following information:**

26 **(A) The information concerning legal proceedings that:**

27 **(i) is required under Section 13 or 15(d) of the federal**
 28 **Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);**
 29 **and**

30 **(ii) the person or responsible party has reported under**
 31 **form 10-K.**

32 **(B) A description of all judgments that:**

33 **(i) have been entered against the person or responsible**
 34 **party in a proceeding described in section 3(a)(3) of this**
 35 **chapter; and**

36 **(ii) have imposed upon the person or responsible party**
 37 **a fine or penalty described in section 3(a)(3)(A) of this**
 38 **chapter.**

39 **(C) A description of all judgments of conviction entered**
 40 **against the person or responsible party within five (5)**
 41 **years before the date of submission of the application or**
 42 **the notice of intent for the violation of any state or federal**

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environmental protection law.

(c) A person may submit a notice of intent referred to in subsection (a)(3) at the same time the person submits the information referred to in subsection (b).

Sec. 3. (a) In a disclosure statement required by section 2 of this chapter, the person or responsible party shall set forth the following information:

(1) The name, business address, and Social Security number of the person or responsible party.

(2) A description of the person's or responsible party's experience in managing the type of facility that will be managed under the permit.

(3) A description of all civil and administrative complaints against the person or responsible party for the violation of any state or federal environmental protection law that:

(A) have resulted in a fine or penalty of more than ten thousand dollars (\$10,000) within five (5) years before the date of the submission of the application or the notice of intent; or

(B) allege an act or omission that:

(i) constitutes a material violation of the state or federal environmental protection law; and

(ii) presented a substantial endangerment to the public health or the environment.

(4) A description of all pending criminal complaints alleging the violation of any state or federal environmental protection law that have been filed against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent.

(5) A description of all judgments of criminal conviction entered against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent for the violation of any state or federal environmental protection law.

(6) A description of all judgments of criminal conviction of a felony constituting a crime of moral turpitude under the laws of any state or the United States that are entered against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent.

(7) The location of all facilities at which the person or responsible party manages the type of facility that would be managed under the permit to which the application or the

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notice of intent refers.

(b) A disclosure statement submitted under section 2(b)(1) of this chapter:

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44-2-1.

Sec. 4. The department may investigate and verify the information set forth in a disclosure statement required by section 2 of this chapter.

Sec. 5. (a) Subject to subsection (c), if the commissioner makes any of the findings listed in subsection (b), the commissioner may deny the following:

(1) An application under IC 13-18-10-2 for approval of the start of construction of the following:

(A) A confined feeding operation.

(B) A major modification of a confined feeding operation.

(2) An application under 327 IAC 5-4-3 for approval of an NPDES permit for the following:

(A) A confined feeding operation.

(B) A major modification of a confined feeding operation.

(3) Coverage under a general permit under 327 IAC 15-15 for:

(A) a confined feeding operation; or

(B) a major modification of a confined feeding operation; for which the person submits a notice of intent under 327 IAC 15-15-5.

(b) The findings that apply to subsection (a) are as follows:

(1) The person or responsible party has intentionally misrepresented or concealed any material fact in a statement or in information required by section 2 or 3 of this chapter.

(2) A civil or administrative complaint described in section 3(a)(3) of this chapter has been filed against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent.

(3) A criminal complaint described in section 3(a)(4) of this chapter has been filed against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent.

(4) A judgment of criminal conviction described in section 3(a)(5) or 3(a)(6) of this chapter has been entered against the person or responsible party within five (5) years before the date of submission of the application or the notice of intent.

(5) The person or responsible party has knowingly and

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repeatedly violated any state or federal environmental protection laws.

(c) The commissioner may not deny a permit under this section based solely upon pending complaints disclosed under section 3(a)(3)(B) or 3(a)(4) of this chapter.

Sec. 6. Before making a determination to deny an application or coverage under section 5 of this chapter, the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the person or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in section 5(b)(2) of this chapter; or

(B) a criminal complaint referred to in section 5(b)(3) of this chapter;

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in section 5(b)(2) of this chapter;

(B) a criminal complaint referred to in section 5(b)(3) of this chapter; or

(C) a judgment of conviction referred to in section 5(b)(4) of this chapter;

whether any appeal is pending.

(4) The degree of culpability of the person or responsible party.

(5) The person's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in section 5(b)(2) through 5(b)(5) of this chapter.

(6) The person's or responsible party's dissociation from any other persons or entities convicted of acts referred to in section 5(b)(2) through 5(b)(5) of this chapter.

(7) Prior or subsequent self-policing or internal education programs established by the person or responsible party to prevent activities referred to in section 5(b) of this chapter.

(8) Whether the best interests of the public will be served by denial of the permit or denial of coverage.

(9) Any demonstration of good citizenship by the person or responsible party.

Sec. 7. (a) In taking action under section 5(a) of this chapter, the commissioner shall make separately stated findings of fact to

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1 support the action taken.

2 (b) The findings of ultimate fact must be accompanied by a
3 concise statement of the underlying basic facts of record to support
4 the findings. However, when the commissioner denies an
5 application or coverage, the commissioner is not required to
6 explain the extent to which any of the mitigating factors set forth
7 in section 6 of this chapter influenced the commissioner's
8 determination to deny the application or coverage.

9 Sec. 8. (a) If there is a prospective change of the entire
10 ownership interest in a facility for which a permit described in
11 IC 13-15-1-2 or an approval described in IC 13-18-10-1 is required,
12 the prospective owner, at least one hundred eighty (180) days
13 before the proposed change in ownership, shall submit to the
14 commissioner a disclosure statement that:

15 (1) includes the information required by section 3(a) of this
16 chapter; and

17 (2) was executed under section 3(b) of this chapter.

18 (b) The commissioner:

19 (1) shall review the disclosure statement submitted under
20 subsection (a); and

21 (2) may investigate and verify the information set forth in the
22 disclosure statement.

23 (c) If the commissioner determines that:

24 (1) the information disclosed by the disclosure statement
25 submitted under subsection (a); and

26 (2) any investigation by the commissioner;

27 would require the commissioner to deny the prospective owner's
28 permit application or coverage if the prospective owner were
29 applying for a permit or submitting a notice of intent under section
30 2 of this chapter, the commissioner shall disapprove the transfer of
31 ownership of the facility to the prospective owner.

32 (d) If there is a change of at least fifty percent (50%) ownership
33 control of an entity:

34 (1) that holds a permit described in IC 13-15-1-2; or

35 (2) for which an approval is issued under IC 13-18-10-1;

36 the entity must, not later than thirty (30) days after the change of
37 ownership control is completed, submit to the department the
38 disclosure statement referred to in subsection (a).

39 (e) The commissioner:

40 (1) shall review the disclosure statement submitted under
41 subsection (d); and

42 (2) may investigate and verify the information set forth in the

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disclosure statement.

(f) If the commissioner determines:

(1) that:

(A) the information disclosed by the disclosure statement submitted under subsection (d); and

(B) any investigation by the commissioner;

would require the commissioner to deny an application for a permit described in IC 13-15-1-2 if the entity that submits the disclosure statement were applying for a permit or submitting a notice of intent under section 2 of this chapter; or

(2) that an entity failed to submit to the department a timely disclosure statement under subsection (d);

the commissioner shall revoke any permit described in IC 13-15-1-2 held by the entity.

Sec. 9. IC 4-21.5 governs determinations, notice, hearings, and appeal of determinations under this chapter.

Sec. 10. The board may adopt rules under IC 4-22-2 to administer this chapter.

SECTION 10. IC 13-18-20-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11.5. (a) In addition to the fee under ~~section 12 of this chapter~~, **IC 13-18-10-2**, when a person files a notice of intent with the department concerning ~~the renewal of:~~

(1) ~~an initial~~; **a general NPDES permit for a CAFO**; or

(2) ~~the renewal of a general~~ **an individual NPDES permit for a CAFO**;

the person must remit a permit fee of one hundred dollars (\$100) to the department.

~~(b) In addition to the fee under section 12 of this chapter, when a person files an application with the department concerning:~~

~~(1) an initial~~; or

~~(2) the renewal of an~~;

~~individual NPDES permit for a CAFO, the person must remit a permit fee of two hundred fifty dollars (\$250) to the department.~~

~~(c) (b) If a person is subject to a fee for a CAFO under this section, no other NPDES fee under this chapter applies to the CAFO. other than the fee under section 12 of this chapter.~~

SECTION 11. IC 13-18-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. (a) **Except as provided in subsection (c)**, when a person files an application with the department concerning a NPDES permit, including:

(1) an application for an initial permit;

(2) the renewal of a permit;

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1 (3) the modification of a permit; or
 2 (4) a variance from a permit;
 3 the person must remit an application fee of ~~fifty~~ **seventy-five** dollars
 4 ~~(\$50)~~ **(\$75)** to the department.

5 (b) If a person does not remit an application fee to the department,
 6 the department shall deny the person's application.

7 **(c) A person filing an application for:**

8 **(1) an initial permit;**

9 **(2) renewal of a permit; or**

10 **(3) modification of a permit;**

11 **issued under 327 IAC 5 or 327 IAC 15 for an individual or general**
 12 **NPDES permit for a CAFO shall remit the fees required under**
 13 **IC 13-18-10.**

14 SECTION 12. IC 15-3-3-12 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. The state chemist
 16 ~~may~~ **shall** adopt rules under IC 4-22-2 relating to the use of fertilizer
 17 material and the distribution and storage of bulk commercial fertilizers
 18 to implement this chapter, including rules that set forth standards for
 19 the storage of bulk fertilizers for the purpose of protecting the waters
 20 of the state.

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